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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/666,066	09/18/2003	Bassam A. Abdel-Dayem	RM590	7684
23996	7590	11/26/2004	EXAMINER	
RICK MARTIN PATENT LAW OFFICES OF RICK MARTIN, PC 416 COFFMAN STREET LONGMONT, CO 80501			CHOI, STEPHEN	
			ART UNIT	PAPER NUMBER
			3724	

DATE MAILED: 11/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/666,066	ABDEL-DAYEM, BASSAM A.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Stephen Choi	3724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 27 October 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) 9 and 10 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-8 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(á)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____.   |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>9/18/03</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____.                                   |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of Species A in the reply filed on 09 September 2004 is acknowledged. Applicant stated that claims 1-10 are readable on the elected species. The examiner respectfully disagrees. Claims 9-10 appear to read on the species B. Accordingly, claims 9-10 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim.

### ***Claim Objections***

2. Claim 4 is objected to because of the following informalities: line 4, "then" should be --than--. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-3 and 5 are rejected under 35 U.S.C. 102(e) as being anticipated by Herrera (US 2003/0217650).

Herrera discloses all the recited elements of the invention including a shaft (324) with a fitting (336), a first phase cutter comprising a skin piercing blade (332), and a

second phase cutter comprising an oval blade containing an elongate sharpened leading edge (310, 312).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Herrera.

Herrera discloses the invention substantially as claimed including a blade having a thin center tapering to a thicker first end and a thicker second end wherein the thin center protruding further distally than the first and second ends. However, Herrera fails to disclose a flat blade. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a flat blade on the device of Herrera since the examiner takes Official Notice on the use of flat blade as old and well known in the art for the purpose of penetrating a device into the workpiece.

7. Claims 1 and 5-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Farha et al. (US 3,780,435) in view of Herrera.

Farha discloses the invention substantially as claimed except for a first phase cutter comprising a skin piercing blade. Herrera discloses a skin piercing blade (332). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a skin piercing blade as taught by Herrera on the device of Farha in order to facilitate initial penetration of device into the workpiece. It is noted

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that the device of Farha can be employed as a stirrer. Regarding claim 8, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide an additional oval body on the device of Farha, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. St. Regis Paper Co. v. Bemis Co., 193 USPQ 8. Furthermore, Herrera discloses an elongated blade having a thicker edges tapering down to a thin central blade area (Figure 13).

### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Mack, Dunkley, Roth, Hostetter, Scott, Plant et al., Paterson et al., Lani, and Ulmer et al. are cited to show related devices.
9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen Choi whose telephone number is 571-272-4504. The examiner can normally be reached on Monday-Friday 9:00-3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan Shoap can be reached on 571-272-4514. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

sc

22 November 2004

*Stephen Choi*  
**STEPHEN CHOI**  
**PRIMARY EXAMINER**